



# SECRETARY OF STATE STATE OF INDIANA

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SECRETARY OF STATE

## **Absentee Ballots and Long Term Care Facilities** **Common Questions and Answers** *For May 4, 2004 Primary Election*

### **Q. Can a person who is in a long term care facility vote by absentee ballot?**

**Yes**, subject to special requirements and procedures. First, the person must be a registered voter when applying for the absentee ballot. Any registered voter who is at least 65 years of age can apply for an absentee ballot. Any voter with disabilities or a voter confined to a health care facility, regardless of age, can also apply for an absentee ballot. (IC 3-11-4-18)

### **Q. What if a voter has a court-appointed guardian or suffers from an illness such as Alzheimer's disease? Can they still vote?**

**Yes**. Under the Indiana Constitution, a person does not lose his or her right to vote as a result of illness or incapacity. This is true even if a court has determined that another person should serve as a guardian to conduct some of the individual's financial or other personal business. However, it is also a felony under Indiana law for a person assisting a voter to intimidate a voter to cast a ballot for or against a candidate or to defraud the voter by leading the voter to believe that the ballot has been cast for a candidate other than the candidate for whom the voter intended to vote. (Article 2, Section 2 of the Constitution of the State of Indiana; IC 35-45-2-1; IC 3-14-2-21)

### **Q. Is a voter automatically considered a legal resident of the precinct where the long term care facility is located?**

**No**. The legal residence of a person for purposes of voting is determined by the intent of the voter and the facts in each case. A voter who is a patient in a long term care facility may not intend to ever return to his/her previous home but to reside in the long term care facility from this point forward. In that case, the voter may transfer his/her registration to the precinct where the long term care facility is located. However, a voter may not intend to stay in the long term care facility, but instead may plan to return to his/her previous home. In that case, the voter would continue to be registered and could cast an absentee ballot in his/her "home" precinct and would not be eligible to register in the precinct where the long term care facility is located. This result would be true even if the long term care facility staff or the voter's family believed it to be very unlikely that the voter will ever return to that home. The decision is the voter's alone, and no one else's. (IC 3-5-2-42.5; IC 3-5-5)

### **Q. Can a voter in a long term care facility receive an absentee ballot through the mail, or must the voter receive the ballot from a county traveling board?**

With one exception, a voter in a long term care facility who is otherwise qualified to receive an absentee ballot can receive the ballot **either** by mail or by delivery from a county traveling board. If a voter is unable to make a voting mark (X or check) on the ballot or to sign the affidavit by voters on the ballot secrecy envelope, then the voter cannot vote the absentee ballot by mail and instead must be visited by the traveling board. (IC 3-11-4-18; IC 3-11-4-21; IC 3-11-10-24)

**Q. Can the long term care facility staff determine which residents should be allowed to vote or when the traveling board should be allowed to visit?**

**No.** Although the overwhelming majority of long term care facility personnel are dedicated to helping their residents lead as full a life as possible, questions came up in past years when some staffers attempted to deny residents access to the ballot or to the traveling board. In response, Indiana enacted the so-called “Nurse Ratchet Law,” which states that the traveling board cannot be denied access to a voter’s place of confinement during a time agreed to by the board and the voter, so long as this time is during the regular office hours of the circuit court clerk. A knowing violation of this law is punishable as obstruction or interference with an election officer, a Class D felony. (IC 3-11-10-25(c); IC 3-14-3-4)

**Q. When is a traveling board usually available to visit a long term care facility?**

**A traveling board must be available to visit on any of the 12 days immediately before election day.** The visit must occur at a time agreed on by the board and the voter and during the regular office hours of the circuit court clerk. The board is only required to visit the voter once. If the voter is unavailable at that time due to a medical emergency, the board may decide to arrange for another visit. (IC 3-11-10-25)

**Q. Can the traveling board from the voter’s county visit a voter who is confined in a long term care facility in another county?**

**Yes,** by unanimous consent of the county election board of the voter’s county. (IC 3-11-10-25(d))

**Q. Who serves on the traveling board?**

**Each absentee voter traveling board consists of two persons, one Democrat and one Republican.** The people serving on a traveling board are nominated by the county Democrat and Republican chairmen and are officially appointed by the circuit court clerk. As a result, voted absentee ballots are always in the custody of representatives of both major political parties to ensure security. (IC 3-11-10-37)

**Q. Is it illegal for an individual other than the absentee voter traveling board to provide assistance to a voter voting an absentee ballot by mail?**

**No,** as long as the provisions of the law are followed. Indiana law requires that a voter personally mark the ballot in secret and that the voter enclose the ballot in the security envelope. Indiana law also requires a person verbally assisting the voter to sign the absentee ballot envelope affirming under penalty of perjury that the voter was not coerced or improperly influenced by the individual assisting the voter. (IC 3-11-4-21)

**Q. If an absentee ballot is sent by mail, can anyone assist the voter in physically marking the ballot?**

**Generally, no, but there are some special procedures for disabled voters.** State law requires that an absentee ballot be marked privately by the voter and that the voter not indicate to any other person for whom the ballot was voted. The voter signs an affidavit on the envelope in which the ballot is returned attesting to those facts. Since the voter’s signature on the return envelope is checked against the voter’s signature on the absentee ballot or voter registration application, a disabled voter may request that a member of the voter’s household or an individual who holds power of attorney for the voter also sign a statement on the return envelope indicating that he/she witnessed the voter making the signature or mark on the return envelope. For voters who have become injured or disabled since originally registering to vote or applying for an absentee ballot, this procedure ensures that the voter’s mark or signature on the return envelope will be accepted. (IC 3-11-4-21)

**IF YOU HAVE ANY QUESTIONS OR TO REPORT ANY UNUSUAL ELECTION-RELATED ACTIVITY YOU FEEL MAY BE ILLEGAL, PLEASE CONTACT THE SECRETARY OF STATE’S OFFICE AT 1-800-622-4941 OR YOUR LOCAL COUNTY PROSECUTOR.**